IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 270 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRABHAI NAGJIBHAI PATEL

Versus

ILABEN MAHENDRABHAI PATEL

Appearance:

1. Civil Revision Application No. 270 of 2004

MR YATIN SONI for Petitioner No. 1

MR ASHISH M DAGLI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 10/01/2005

ORAL JUDGEMENT

Heard Mr.Yatin Soni, learned counsel appearing for the petitioner and Mr.A.M.Dagli, learned counsel appearing for the respondent on merits.

2. Mr.Yatin Soni, learned counsel appearing for the petitioner, has taken me through the relevant averments made in the impugned order dated 24th May, 2004, passed by the Jt. District Judge (FTC No.4), Bharuch, in Misc.Application No.119 of 2004, praying for condonation of delay caused in preferring an appeal against the order passed by the learned Civil Judge (S.D.), Bharuch. The petitioner-husband, on the date of filing of the main petition under Hindu Marriage Act, was aged 62 years and the respondent-wife was aged 59 years. The learned Civil Judge (S.D.), Bharuch, while granting the application for interim alimony preferred under Section 24 of the Hindu Marriage Act, directed the petitioner to pay maintenance of Rs.1500/- per month and Rs.200/- towards costs. The petitioner intended to challenge the said order dated 16th December, 2003, by way of an appeal before the First Appellate Court; but as the appeal was barred by law of limitation, Misc.Application praying condonation of delay of 25 days caused in preferring the appeal was preferred and as the same was rejected vide judgment and order of the learned Joint District Judge, the present Revision Application has been filed.

3. The Jt.District Judge (FTC No.4), Bharuch, while passing the impugned order has observed that the petitioner has failed in explaining the delay and has not successfully established the sufficient cause within the meaning of Section 5 of the Limitation Act and, therefore, the delay caused should not be condoned. In response to the contention that the petitioner had initially attempted to engage an advocate to prefer an appeal in the Gujarat High Court but subsequently he came to know that the appeal is required to be filed in the District Court only. The learned Judge has observed that the petitioner is an educated person and ignorance of law is no excuse; and he has not proved beyond reasonable doubt that he had ever contacted any advocate of the High Court to file any appeal. In such a situation, it would be difficult for such petitioner to have a supporting affidavit from the concerned advocate especially when the delay is not gross. The period of delay is also not unreasonably more and it would also not be proper to insist upon production of a medical certificate, if one has fallen casually sick for a very short period. The adoption of liberal view only can meet the ends of justice. In such a fact situation along with pragmatism that has been insisted by this Court as well as the Apex Court earlier in 'n' number of decisions.

3. In various decisions, this Court and the Apex

Court has held that the approach of the Court should be liberal and pragmatic; when an application under Section 5 of the Limitation Act is placed praying for condonation of delay. It seems that percolation process is very slow. The types of litigation and intention of the parties praying condonation of delay are also relevant criteria and it becomes possible for the Courts to assess such aspects from the facts emerging from record. In a given case, the delay of couple of days may not be found explained satisfactorily and on the other hand, the Courts have gracefully condoned the delay of even several days or months. It is true that in the cases where the petitioners have no merit at all, the Court can think conservatively while dealing with condonation of delay plea but this matter being a matrimonial matter and looking to the age of the petitioner and his wife, the Jt.District Judge (FTC No.4), Bharuch, ought to have condoned the delay. The rejection of delay condonation application in such matters may take wrong signal to the society; especially when the law is very much settled on this point.

4. Though Mr.Dagli, learned counsel appearing for the respondent, has resisted the present petition, I do not find any merits in his submissions and I find that the Revision Application requires to be allowed.

5. Hence, the present Revision Application is hereby allowed. The order dated 24th May, 2004, passed by the Jt.District Judge (FTC No.4), Bharuch, in Misc. Application No.119 of 2004, is hereby quashed and set aside. It is hereby ordered that the delay of 25 days caused in filing the appeal against the order dated 16th December, 2003, passed by the Civil Judge (S.D.), Bharuch, in Hindu Marriage Petition No.33/2002, is hereby condoned and the learned Appellate Judge shall hear and decide the appeal of the petitioner herein on its own merits in accordance with law.

Rule is made absolute in above terms with no order as to costs.

(C.K. Buch, J)

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